IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

W.P. No. 437 of 2003 (S/B)

Balwant Singh Shahi ……. Petitioner

Versus

State of Uttaranchal & others …… Respondents

Hon. P.C. Verma, A.C.J.
Hon. M.M. Ghildiyal, J.

Heard Mr Manoj Tiwari, learned counsel for the petitioner and Mr. P.S. Adhikari, learned counsel for respondent No. 4.

An application bearing No. 10077 of 2003 has been filed by Mr. P.S. Adhikari praying for the vacation of the interim order dated 21.8.2003 passed by this Court. On 21.8.2003, the Division Bench of this Court passed the following order:

"Rule.

Respondents waive service.

Generally, this Court not interfere with the transfer orders. However, this matter is an exception to the general rule.

Prior to 1.8.2003, the respondent no. 4 was holding a dual charge as Assistant Conservator of Forest of two sub-divisions at Didihat and Bearing. On 15.7.2003, a list of transfers was published. That list was concerning fourteen officers. That list was issued by the respondent no.2 being the Principal Chief Conservator of Forest, Uttaranchal, Dehradun. In that list the petitioner was posted at Didihat as Assistant Conservator of Forest. This list was followed by order dated 1.8.2003 by which respondent no.4 was posted at Bearing and the petitioner was posted at Didihat. As can be seen from the counter affidavit filed on behalf of respondent no. 2, respondent no. 4 approached some higher authority and pursuant to that approach an order came to be passed on 6.8.2003 by respondent no.2, revoking his earlier order dated 1.8.2003 on the ground that it was passed under mistake. When that mistake came to be realised by respondent no.2 is not stated in the counter affidavit.

However, prima facie the facts are very clear. The respondent no.4 wants his posting at Didihat and he is objecting the petitioner being posted at Didihat. On reading the affidavit of respondent no.2, it is clear that under some pressure from higher-ups, the entire exercise was undertaken by the respondent no.2 mala fide to cancel the order dated 1.8.2003. On 15.7.2003, the list of transfer was made by the respondent no.2. In that list, the petitioner has been specifically posted at Sub-Division, Didihat. Therefore, the order dated 1.8.2003 was passed correctly. Under the circumstances, we have admitted the petition and following interim order is passed.

The petitioner will be posted as Assistant Conservator of Forest at Sub Division, Didihat in terms of the order dated 15.7.2003. Consequent upon that order, respondent no.4 will stand posted at Bearing in terms of order dated 1.8.2003.

We may also mention at this stage that respondent no.4 was posted on request as Assistant Conservator of Forest at Didihat in 1999 and under general norms of transfer even otherwise the period of three years is the norm for transfer of officers.

Liberty is given to the respondent no.4 to mention the matter for final hearing after two months.

We clarify that this order will not operate for all times. Whenever general transfers are effected or if any transfer is warranted in public interest, if writ petition is pending liberty is given to State to move this Court for modification."

In the counter affidavit filed by the PCCF, Uttaranchal, Nainital, a specific statement has come on behalf of State that the Didihat Forest Sub-Division of Pithoragarh Forest Range was not vacant and was occupied by the respondent No. 4. The petitioner should have been transferred to Bearing and this mistake was realised and therefore, the clarificatory order was issued which is impugned in the writ petition.

In view of this clear admission of the State Government regarding the nature of the order impugned passed by the PCCF that it is clarificatory in nature, therefore, the petitioner cannot raise any grievance. This Court has given liberty to pass an appropriate fresh order whenever general transfer orders are affected or if any transfer order is warranted in the interest. Liberty is given to State to move this Court for modification.

In view of the aforesaid observations made by the Division Bench of this Court, we provide that the Principal Chief Conservator of Forests may pass fresh order, if it is warranted in the public interest by the end of May 2004.

Learned counsels for the parties have agreed that the writ petition may be disposed of in aforesaid terms. Therefore, the writ petition is disposed of finally.

(M.M. Ghildiyal, J) **(P.C. Verma, A.C.J.)**

Dt. 07.04.2004.
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